

Court No. - 16

Case :- APPLICATION U/S 482 No. - 2765 of 2010

Applicant :- Vineet Ranjan Srivastava

Opposite Party :- State Of U.P. Thru. C.B.I. Acb Lucknow

Counsel for Applicant :- Salil Kr. Srivastava, Manoj Kumar Misra

Counsel for Opposite Party :- Bireshwar Nath, Anurag Kumar Singh

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Manoj Kumar Misra, the learned counsel for the applicant, Sri Dharmendra Pratap Singh holding brief of Sri Anurag Kumar Singh, the learned counsel for the respondent-CBI and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has prayed for setting aside the summoning order dated 13.05.2010 including the impugned charge-sheet arising out of FIR No. RC 0062007A0023/2007, Case No. 13/2010-State v. K.K. Trivedi & others, under Sections 420, 468, 120-B read with Section 471 IPC and Section 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988 pending in the Court of Special Judge, Anti Corruption (West) CBI, Lucknow.

3. The aforesaid case was registered on the basis of an FIR lodged on 13.12.2007 against 15 persons, not including the applicant, stating that during the year 2002-04, certain bank officers entered into criminal conspiracy with private persons with a common object to commit the offences of cheating, forgery and criminal misconduct by sanctioning and disbursing housing loans and CCH limits against forged and bogus documents and non-existing firms/ properties and thereby caused wrongful loss to Canara Bank for Rs. 59.70 lacs, Union Bank of India for Rs. 201.59 lakhs and Central Bank of India for Rs. 49.40 lakhs approximately.

4. After investigation, the CBI submitted a charge sheet on 30.04.2010 against 15 persons, including the applicant. Regarding the applicant, the allegations levelled in the charge sheet is that he was an approved valuer of the bank. M/s Sagar Traders had applied for obtaining CCH limit of Rs. 25 lakh on the basis of projected sale of Rs. 150 lakh, against the actual sale of Rs. 36.70 lakh and 38.00 lakhs for the financial year 2001-02 and 2002-03. A collateral security was created in the form of mortgage of a building, which was valued at Rs. 2.73 crores by the bank's approved valuer-the applicant.

5. On 27.01.2003, the applicant had submitted a valuation report regarding another property in the name of co-accused Smt. Phool Kali at Rs. 34.99 lakhs. A CCH limit of Rs. 30 lakh was sanctioned on 07.03.2003 to M/s New Shukla Medical Stores, of which Sri Virendera Kumar Shukla and Smt. Phool Kali were partners. After the account was declared NPA, the property was got valued through a consultancy firm, which opined the properties value to be 13.85 lakh only. The charge sheet mentions that this fact shows that the applicant had not submitted the earlier valuation report in a proper manner.

6. The charge sheet states that the borrowers namely Prem Kumar Gupta, proprietor of M/s Sagar Traders and Virendra Shukla and Smt. Phool Kali, the partners of M/s New Shukla Medical Stores have misused/ misappropriated the loan amounts and have cheated the bank to the tune of Rs. 123 lakh in connivance with the then Branch Manager and Manager Credit of the bank, by submitting false and forged documents and they have caused wrongful loss to the bank and corresponding gain to themselves. It is alleged that the offences were alleged by the other co-accused persons in connivance with the applicant and the applicant has been charged with commission of offences under Sections 120-B, 420, 468 r/w 471 IPC and 13(2), 13(1) (d) of the Prevention of Corruption Act, 1988.

7. The learned counsel for the applicant has submitted that the charge sheet itself records that the CCH limit of Rs. 30 lakhs was sanctioned

by the bank officials, who failed to obtain Income Tax returns, Sale Tax returns and audited balance sheet of the firm before sanctioning CCH limit. The CCH limit was sanctioned ignoring the bank norms and actual status of the firm. He has submitted that the applicant had no role to play in verification of the aforesaid documents or in sanction of the CCH limit and the housing loans.

8. The learned counsel for the respondent has opposed the application and he has submitted that in the counter affidavit filed on behalf of the respondents, it has been stated that the applicant is an approved valuer of the bank and he had given a false valuation report dated 27.01.2003 in respect of plot no. 1 (khasra no. 52 and 53 with shops constructed over there), which property was in the name of co-accused Phool Kali, on the basis whereof CCH limit of Rs. 30 lakh was sanctioned to New Shukla Medical Stores, Lucknow.

9. I have considered the aforesaid facts and circumstances of the case and submissions advanced by the learned counsel for the parties.

10. In ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, the Hon'ble Supreme Court discussed several precedents on the scope of Section 482 Cr.P.C. and extracted the following principles: -

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)

of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

11. In ***K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547***, it was held that: -

“4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed...”

12. In ***Soma Chakravarty v. State, (2007) 5 SCC 403***, the Hon’ble Supreme Court held that: -

“if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing

of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.”

13. In ***Akbar Hussain versus State of J&K, (2018) 16 SCC 85***, the Hon’ble Supreme Court held that: -

“5. ... At the time of framing the charge, the trial court has to consider the material before it by the investigating officer and form a prima facie opinion thereupon as to whether it is a fit case for framing of charge under a particular provision. The standard of proof test, which is to be applied at the final stage, in order to find out as to whether the accused is guilty or not on the basis of actual evidence produced is not to be applied at the stage of framing of the charge. Charge can be framed even when there is a strong suspicion founded upon materials before the Court, which leads the court to form a presumptive opinion as to existence of the factual ingredient constituting the offence alleged.”

14. In ***State of Uttar Pradesh and Another Versus Akhil Sharda and Others, 2022 SCC OnLine SC 820***, the Hon’ble Supreme Court held that *“no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered.”*

15. In ***Kaptan Singh v. State of U.P., (2021) 9 SCC 35***, it was held that :

“exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.”

16. When we examine the facts of the present case in light of the law laid down by the Hon’ble Supreme Court in the above referred cases, we find that the prosecution claims that the CCH limits in question

were sanctioned to M/s Sagar Trades and New Shukla Medical Stores after taking into consideration the valuation reports submitted by the applicant, which were found to be false. Some other documents which were also taken into consideration by the bank, viz. income tax returns, sales tax returns and the projected sales etc. were also found to be false, but it will not make any difference on the conduct of the applicant in submitting false valuation reports of the property mortgaged for obtaining CCH limits, which valuation reports were found to be false and properties were found to be grossly overvalued by the applicant. The valuation reports had also formed the basis for sanction of the CCH limits, apart from certain other documents.

17. Detailed scrutiny of the allegations and evidence is not to be done by the Court at this stage and the Court has merely to see whether the allegations leveled against the applicant make out a case for his trial for the offences alleged or not. From the allegations leveled in the FIR, commission of the offences alleged against the applicant is prima facie made out. The present case does not fall under any category mentioned by the Hon'ble Supreme Court in the case of *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*.

18. The applicant lacks merit and the same is accordingly *dismissed*.

Order Date :- 16.10.2023

Pradeep/-